

BEFORE THE REAL ESTATE AGENTS DISCIPLINARY TRIBUNAL

[2022] NZREADT 15

Reference No: READT 031/2021

IN THE MATTER OF

Charges laid under s 91 of the Real Estate Agents Act 2008

BROUGHT BY

**COMPLAINTS ASSESSMENT COMMITTEE
2108**

AGAINST

ANDREW ROBERT RANKIN
First Defendant

TREMAIN REAL ESTATE WAIRARAPA LTD
Second Defendant

Hearing in Auckland on 26 July 2022

Tribunal:

D J Plunkett (Chair)
Mr G Denley (Member)
Mr N O'Connor (Member)

Appearances:

Counsel for the Committee:	D La Hood
The first defendant:	Self-represented
Counsel for the second defendant:	B J Gunter

DECISION
(Charges and Penalty)
Dated 10 August 2022

INTRODUCTION

[1] Andrew Robert Rankin, the first defendant, was a licensed salesperson under the Real Estate Agents Act 2008 (the Act). He was licensed until 17 October 2020.

[2] Mr Rankin has been charged by Complaints Assessment Committee 2108 (the Committee) with misconduct under s 73(a) of the Act (disgraceful conduct). It is alleged that in completing agency (listing) agreements in respect of six sales, Mr Rankin forged the signatures and initials of the vendors.

[3] Mr Rankin filed an amended Response to Charge on 23 February 2022 admitting the charge.

[4] Tremain Real Estate Wairarapa Ltd (Tremain Real Estate or the agency), the second defendant, was the agency which engaged Mr Rankin. It is a licensed company agent. Mr Rankin left Tremain Real Estate on 25 September 2020.

[5] Tremain Real Estate has been charged by Complaints Assessment Committee 2108 with misconduct under s 73(c)(iii) of the Act (wilful or reckless contravention of a rule), or alternatively misconduct under s 73(b) (seriously incompetent or negligent work). It is alleged it failed to report Mr Rankin's misconduct to the Real Estate Agents Authority (the Authority), as required under r 7.2 of the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (the Rules).

[6] Tremain Real Estate admits the first charge of misconduct.

[7] A summary of facts (17 May 2022) has been agreed between the Committee and Tremain Real Estate. Mr Rankin did not engage with the parties in the compiling of the summary and did not respond to the Tribunal's invitation to consider the summary. He did not attend the hearing. The Tribunal may proceed in the absence of a party.¹

BACKGROUND

[8] The following narrative is taken largely from the agreed summary.

Pukemiku Road

[9] On 23 January 2020, Mr Rankin sold the Pukemiku Road property.

¹ Real Estate Agents Act 2008, s 109A(2)(b).

[10] The agency agreement was dated 8 November 2019 and appeared on its face to be signed and initialled by the vendors.

[11] The vendors have advised that the signatures and initials on the agency agreement were not theirs. They did not know who had filled out the form and they were unsure if they had ever seen the completed form.

Pitt Street

[12] On 19 May 2020, Mr Rankin sold the Pitt Street property.

[13] The agency agreement was dated 17 December 2019 and appeared on its face to have been signed and initialled by the vendors.

[14] The vendors have advised that the signatures and initials on the agency agreement were not theirs. They were unsure if they had ever seen the agency agreement.

Sedcole Street

[15] On 3 February 2020, Mr Rankin sold the Sedcole Street property.

[16] The agency agreement was dated 22 January 2020 and appeared on its face to be signed and initialled by the vendors.

[17] The vendors have advised they did not sign or initial the agency agreement. They did not recall seeing the completed agency agreement at the time of selling their house.

Bowen Street

[18] On 19 February 2020, Mr Rankin sold the Bowen Street property.

[19] The agency agreement was dated 6 February 2020 and appeared on its face to be signed and initialled by the vendors.

[20] The vendors have advised that the signatures and initials on the agency agreement were not theirs. They had not seen the completed agency agreement before.

Tyndall Street

[21] In 2020, Mr Rankin approached the vendors of the Tyndall Street property, and inquired into whether they would be interested in putting their property on the market. He had a potential buyer.

[22] The vendors agreed to put their property on the market, but decided to make it a general listing. They involved another agency, Property Brokers Limited (Property Brokers).

[23] On or about 20 May 2020, the vendors informed Mr Rankin that Property Brokers had two offers coming in and they were looking to “close it down” by 22 May 2020. Mr Rankin and Property Brokers were unable to get an offer ready by the vendors’ deadline.

[24] On or about 22 May 2020, the vendors called Mr Rankin and asked if his buyer was still interested. An offer from his buyer was accepted by the vendors. They signed the sale and purchase agreement on 25 May 2020.

[25] The Property Brokers licensee then presented the vendors with a larger offer for the property, but they had already signed the sale and purchase agreement with Mr Rankin’s buyer. During this discussion, the vendors noted they had received a letter from Tremain Real Estate dated 26 May 2020, which enclosed an agency agreement dated 25 May 2020. The agency agreement appeared on its face to be signed and initialled by them.

[26] The vendors have advised they did not sign or initial the agency agreement and the signatures were not theirs. They informed the licensee from Property Brokers of this.

Report to Real Estate Agents Authority

[27] The licensee from Property Brokers reported the Tyndall Street matter to the Authority on 13 July 2020.

George Street

[28] On 13 August 2020, Mr Rankin prepared an appraisal of the George Street property for the vendor. Mr Rankin then went to the property on 19 August 2020 to take photographs.

[29] On 20 August 2020, the vendor visited Mr Rankin and asked him to get a cash offer for the property urgently, so that he could buy another property.

[30] The agency agreement is dated 20 August 2020. Mr Rankin had filled it out, including the signature and initials of the vendor.

[31] On 27 August 2020, Mr Rankin presented the vendor with an offer for the property, which was accepted. The vendor later received a copy of the agency agreement in the mail and discovered that his signature had been completed for him. He had not signed the agency agreement.

Tremain Real Estate learns of George Street forgery

[32] The George Street vendor contacted Mr Rankin about the agency agreement. Mr Rankin referred him to the regional manager of Tremain Real Estate, Rob Slater. The vendor then contacted Mr Slater that day, 27 August 2020. Mr Slater asked Mr Rankin for a written account which he provided on 28 August 2020.

[33] Mr Slater, together with Stuart Christensen (general manager of Tremain Real Estate), met with Mr Rankin on 2 September 2020. Mr Slater told Mr Rankin he would not receive commission for the sale of the George Street property. Mr Slater asked Mr Rankin to write a letter of apology to the vendor. Mr Christensen also asked Mr Rankin if he had forged any other documents. Mr Rankin replied in the negative.

[34] Mr Rankin duly wrote a letter of apology (10 September 2020) which was provided to the vendor on 11 September 2020.

[35] Tremain Real Estate accordingly knew that Mr Rankin had admitted to forging the vendor's signature and initials. It decided to address matters internally by implementing the following steps:

1. Mr Rankin was to write a complete summary of events leading up to the incident, as well as provide a doctor's prescription.
2. Mr Rankin was to write an apology letter to the vendor of the George Street property, which was to be delivered to the vendor by Mr Slater.
3. Mr Slater was to explain the agency's complaints process to the vendor.
4. An accountability worksheet was to be prepared for Mr Rankin, including a six-month probation period where all appraisals, agency agreements and sale and purchase agreements would be checked.
5. Weekly catch ups were to be arranged for Mr Rankin with Victoria Koszegi, a licensee.

6. Mr Slater was to be in contact with Mr Rankin on a fortnightly basis to check in and ensure that he was continuing with counselling.

The Authority contacts Tremain Real Estate

[36] On 23 September 2020, the Authority's investigator contacted Tremain Real Estate concerning the Tyndall Street matter. The agency had only been aware of the George Street matter until then. At this point, the Authority and the agency simultaneously became aware of more than one incident.

[37] The Authority initiated a review of Mr Rankin's listings over the prior 12 months. Tremain Real Estate contacted Mr Rankin by phone. He was stood down when he admitted the second forgery regarding Tyndall Street.

[38] On 24 September 2020, Tremain Real Estate filed a report with the Authority showing a timetable of events, documentation and a summary of conversations with Mr Rankin (unseen by the Tribunal). This had been requested by the Authority on 23 September 2020.

[39] According to the summary of facts agreed between the Committee and Tremain Real Estate, the responses of the defendants were as follows.

Mr Rankin's response

[40] Mr Rankin admitted to forging the signatures on the agency agreements for the Tyndall Street and George Street properties:

1. In respect of Tyndall Street, Mr Rankin said he felt under pressure by the vendors to get the sale done, or else they would give the sale to the other agency.
2. In terms of George Street, Mr Rankin said that he was on medication at the time, he felt "extremely low/tired and stressed" and the vendor was being "all over the show" demanding an offer as soon as possible. He said "for some crazy reason" he filled in the agency agreement.

[41] Mr Rankin offered no specific explanation for the agency agreements concerning the other four properties:

1. In respect of Sedcole Street, Mr Rankin said he could not remember who signed the agreement but accepted the signatures did look like his.

2. In respect of Pitt Street, Mr Rankin said he did not know who had signed the agency agreement but accepted the signatures on the agency agreement and sale and purchase agreement did not look the same.
3. Mr Rankin denied signing the agreement for the Bowen Street property, saying the vendors had signed it.
4. In respect of Pukemiku Road, Mr Rankin believed that the agreement was signed by the vendors but admitted the signature did look like his and he could not be sure.

Tremain Real Estate's response

[42] Tremain Real Estate said that when it became aware of the forged signature and initials in respect of the George Street property the issue was immediately elevated and given the attention it was due. They removed Mr Rankin from the listing and carried out an investigation as to the validity of the concern and implemented protections for the vendor.

[43] Ms Koszegi took over the marketing and obtained a fully signed agency agreement from the vendor on 27 August 2020. She assisted the vendor with the process as he worked through the sale and purchase agreement conditions. The vendor was given a 50 per cent reduction in fees for the sale.

[44] During Tremain Real Estate's meeting with Mr Rankin, his deep feeling of guilt and shame became apparent, as did issues with his mental health, illness and another trouble (disclosed).

[45] At the same time, Tremain Real Estate believed that the issue in respect of the sale of the George Street property was an isolated one, that Mr Rankin had made a mistake and that the measures subsequently put in place (a six-month intensive supervision period) were thorough and clear.

CHARGES

Jurisdiction and principles

[46] This matter concerns charges of misconduct against licensees brought by a Committee.

[47] Misconduct is defined in the Act:

73 Misconduct

For the purposes of this Act, a licensee is guilty of misconduct if the licensee's conduct—

- (a) would reasonably be regarded by agents of good standing, or reasonable members of the public, as disgraceful; or
- (b) constitutes seriously incompetent or seriously negligent real estate agency work; or
- (c) consists of a wilful or reckless contravention of—
 - (i) this Act; or
 - (ii) other Acts that apply to the conduct of licensees; or
 - (iii) regulations or rules made under this Act; or
- (d) constitutes an offence for which the licensee has been convicted, being an offence that reflects adversely on the licensee's fitness to be a licensee.

[48] The Tribunal may regulate its procedures as it thinks fit, though it is subject to the rules of natural justice.²

[49] The Tribunal may receive any document or information that may, in its opinion, assist it, whether or not that document or information would be admissible in a court.³ Subject to that and other matters, the Evidence Act 2006 applies.⁴

[50] It is the civil standard of proof, the balance of probabilities, that is applicable.⁵ However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.⁶

Mr Rankin

[51] The Tribunal records that it accepts the facts as set out in the summary agreed between the Committee and Tremain Real Estate. While Mr Rankin did not sign the summary, he has admitted the charge and therefore its core elements (see his amended Response to Charge). He has not challenged the narrative in the summary. In respect of George Street, Mr Rankin admitted that he had “filled out the listing form” in his written account to Mr Slater of 28 August 2020. In respect of Bowen Street, he apparently

² Real Estate Agents Act 2008, s 105.

³ Section 109(1).

⁴ Section 109(4).

⁵ Section 110.

⁶ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [101]–[102], & [112].

denied the forgery in his discussion with Mr Slater, but he has not denied it to the Tribunal. Indeed, he admits the charge, including the Bowen Street forgery, before the Tribunal.

[52] The charge against Mr Rankin is that of misconduct (disgraceful conduct) under s 73(a) of the Act. It is alleged that in completing six agency agreements, he forged the signatures and initials of the vendors. Mr Rankin admits this.

[53] While Mr Rankin did not appear at the hearing or file evidence or submissions as invited by the Tribunal, he did explain his circumstances in a submission to the Tribunal filed with his original Response to Charge on 13 January 2022. The explanation does not contest the charge and is more relevant to the later penalty discussion, but it will be set out here in some detail as it is the only explanation received from him.

[54] Mr Rankin said he did not want to appear in person at the Tribunal's hearing as it was too stressful and he could not afford a lawyer. He had mental health and anxiety issues arising from his time at Tremain Real Estate and other agencies.

[55] Mr Rankin stated that he had worked at a previous agency and was found guilty of selling a drug house.⁷ This fully exposed him on social media and showed him to be a "really bad person". The local newspaper published a full-page article with his photo, which had a huge impact on him and his family.

[56] Subsequently, Mr Rankin joined another agency and achieved some residential sales. He then joined Tremain Real Estate. The biggest problem he faced was managers from another region coming to his area, but they did not call at his office. Tremain Real Estate and its associated companies were expanding into his area. He kept asking to be informed of the identity of his manager.

[57] Licensees in rival agencies would remind him of the drug house case and even his colleagues would "always jest" and say processes should not be done his (Mr Rankin's) way since that would lead to trouble. They did not know how much this hurt him. His relationship with one of his colleagues was not good.

[58] Mr Rankin says that the harder he worked to get recognition, the less help he was receiving. He was spiralling down, had huge amounts of anxiety, stopped sleeping and felt his integrity was being questioned daily.

[59] When Mr Rankin got the phone call on 26 August 2020 from the George Street vendor to say the signature on the listing document was not his, he felt relieved.

⁷ Mr Rankin's previous disciplinary history is discussed later.

Mr Slater, who had also received a call from the vendor, then rang him. He was fully prepared to resign on the spot. Mr Rankin was told he would not receive any commission, which he did not in any event want. A meeting with Mr Christensen followed. Mr Christensen told him not to go to the office and then told him 48 hours later, he did not have a job.

[60] According to Mr Rankin, he did not get much help from the company's management, apart from Mr Slater.

[61] This episode has resulted in his personal and family life crumbling under the pressure of it all. He was put on medication. It helped him to realise how much of a mess he was in.

[62] Mr Rankin says he makes no excuses for what he has done. He is not proud of it. It might shed some light on why and how some people lose their way with mental stress.

[63] The Tribunal records that on 21 February 2022, Mr Rankin sent to the Tribunal some information concerning his health:

1. Photograph of two tablet containers in his name (dated October 2020).
2. Medical printout from his general practitioner (8 February 2022). It shows no material items on the "Problem List" and identifies one long-term medication (well known for the treatment of a mental health condition).
3. Letter from a counsellor (16 June 2021) noting that Mr Rankin was having counselling for reoccurring stress and anxiety caused by his work at Tremain Real Estate. The counsellor stated that appearing before the Tribunal would trigger anxiety related stress.

[64] Mr Rankin did not request an adjournment of the hearing, despite the Tribunal's invitation on 4 February and 30 June 2022 to file medical evidence if it was contended he was not capable of attending a hearing due to his health. No such evidence, apart from that set out above, was filed.

[65] We find that Mr Rankin's conduct in forging the signatures and/or initials of vendors on not just one but six agency agreements is a marked and serious departure from the requisite standards. It is deceitful and is rightly characterised as disgraceful.⁸ The probity and trustworthiness of professionals is critical. It is disgraceful

⁸ *Morton-Jones v Real Estate Agents Authority* [2016] NZHC 1804 at [29].

notwithstanding that there was no loss to the vendors and conceivably no financial gain to Mr Rankin (see discussion later in the penalty section).

[66] The charge of disgraceful conduct against Mr Rankin is proven.

Tremain Real Estate

[67] The charge against Tremain Real Estate is that of misconduct (wilful or reckless contravention of the Rules) under s 73(c)(iii) of the Act. It is alleged that on 27 August 2020, Tremain Real Estate became aware that Mr Rankin had admitted forging the signature and initials of the vendor on the George Street agency agreement. However, it failed to make a report to the Authority as required under r 7.2 of the Rules, until that was specifically requested by the Authority on 23 September 2020. It is contended this is a wilful or reckless contravention of r 7.2.

[68] In the alternative, the failure to report Mr Rankin's suspected misconduct was seriously incompetent or seriously negligent work, under s 73(b).

[69] Rule 7.2 of the Rules states:

7 Duty to report misconduct or unsatisfactory conduct

...

7.2 A licensee who has reasonable grounds to suspect that another licensee has been guilty of misconduct² must make a report to the Authority.

² Misconduct is defined in the Act: see section 73.

...

[70] Tremain Real Estate admits the charge of misconduct (wilful or reckless contravention of r 7.2).

Affidavit of Mr Christensen

[71] Mr Christensen, the general manager of Tremain Real Estate, has sworn an affidavit (30 May 2022).

[72] Mr Christensen states that Mr Rankin was employed by Tremain Real Estate in March 2018. He was considered to be down to earth and honest. He was always extremely compliant when following company policy and guidelines. So, when Mr Christensen first found out about George Street, he was shocked and understood it to be an isolated event.

[73] It was on 27 August 2020 that the vendor of the George Street property advised Mr Slater that the agency agreement had not been signed by him. On 2 September 2020, Mr Christensen and Mr Slater met with Mr Rankin. He was asked to sign a full written account, which he did. Mr Rankin was told his behaviour was unacceptable and he would not receive a commission. He was asked to write a letter of apology to the vendor, which he did. Mr Rankin was asked whether he had forged any other documents, which he denied.

[74] During this meeting, Mr Rankin's deep feeling of guilt and shame became apparent, as did his issues with a mental condition, a serious illness and another trouble. It became very apparent that he was not in a good place emotionally. His medication had left him feeling not himself. The Tribunal notes further particulars of Mr Rankin's condition, which are not necessary to record for this public decision.

[75] Mr Christensen was extremely concerned about Mr Rankin's welfare. He was in a very dark place and although he was highly repentant, placing another weight on his shoulders would have been too much. Mr Christensen was concerned that reporting Mr Rankin to the Authority would 'tip him over the edge'.

[76] The decision made by Mr Christensen to keep the issue in-house was purely for the safety and wellbeing of Mr Rankin, who needed support through this challenging period. Mr Christensen's view was that the best course of action was to deal with the matter internally. In Mr Christensen's mind, there was no doubt that reporting Mr Rankin would have been extremely detrimental to his mental health.

[77] The internal steps implemented by Tremain Real Estate were robust (being the six steps set out earlier at [35]).

[78] Mr Christensen refers to the phone call from an officer of the Authority on 23 September 2020 and the realisation there was more than one incident. He was asked to make a report to the Authority, which he did the next day. Mr Christensen contacted Mr Rankin shortly after the call and stood him down when he admitted the second forgery.

[79] On 24 September 2020, the officer called Mr Christensen expressing "great concerns" for Mr Rankin's personal safety, adding that she hoped "he would be with us tomorrow". Mr Christensen was asked to check on him.

[80] Mr Christensen understands that it was a mistake to fail to report the matter under r 7.2. In hindsight, Mr Rankin should have been dismissed immediately when he

admitted to forgery and further investigations should have been undertaken to ascertain whether it was an isolated incident.

[81] Mr Christensen concludes by acknowledging that he should have contacted the Authority at an early stage to seek advice and discuss his concerns about Mr Rankin's mental health. He had learned a valuable lesson and should a similar incident arise again, he would address it in accordance with the Rules.

[82] The Tribunal notes the agency's acceptance that it became aware of Mr Rankin's forgery of an agency agreement on 27 August 2020. It had actually been confirmed by Mr Rankin shortly thereafter.

[83] Tremain Real Estate then undertook an internal process to deal with Mr Rankin's conduct. It was reasonable and appropriate. However, what it did not do was report his admitted misconduct to the Authority, as required by r 7.2. It was not until contacted by the Authority on 23 September 2020, that the agency acknowledged knowing of the George Street forgery and then a full report was produced the next day.

[84] In the submissions to the Tribunal of counsel for Tremain Real Estate (19 July 2022), liability for misconduct is accepted.

[85] The managers of Tremain Real Estate made the decision not to report Mr Rankin's serious misconduct. They did so for what they regarded as good reason, but their failure to report was intentional. They are not saying they did not know of the obligation to report. In other words, there was a wilful breach of r 7.2.

[86] Tremain Real Estate did not, however, ignore Mr Rankin's misconduct, nor did it place the public at risk by its failure to report. The managers were also rightly concerned about Mr Rankin's wellbeing. These factors are not a defence to the charges and nor are they advanced as such. They will be considered in full in assessing the appropriate penalty.

[87] We accordingly uphold the first charge against Tremain Real Estate. The agency misconducted itself by wilfully contravening r 7.2.

[88] It is additionally noted by the Tribunal that Mr Christensen has himself identified what Tremain Real Estate should have done regarding its concern as to the effect on Mr Rankin of a report to the Authority.⁹ It should have informed the Authority of its concern at the same time the report was made. It would be for the Authority to then decide how to proceed.

⁹ Affidavit of Mr Christensen (30 May 2022) at [35].

[89] Furthermore, on first learning of the George Street forgery, the agency should also have immediately initiated an investigation itself into Mr Rankin's more recent sales to see if his denial of other forgeries was true. The forgery of a signature on an agreement is plainly serious misconduct and should have prompted an investigation by the agency, as Mr Christensen accepts.

PENALTY

Jurisdiction and principles

[90] The Tribunal's jurisdiction to impose penalty orders if misconduct is proven is set out in the Act:

110 Determination of charges and orders that may be made if charge proved

- (1) If the Disciplinary Tribunal, after hearing any charge against a licensee, is satisfied that it has been proved on the balance of probabilities that the licensee has been guilty of misconduct, it may, if it thinks fit, make 1 or more of the orders specified in subsection (2).
- (2) The orders are as follows:
 - (a) 1 or more of the orders that can be made by a Committee under section 93 (except under section 93(1) (ha)):
 - (b) an order cancelling the licence of the licensee and, in the case of a licensee that is a company, also cancelling the licence of any officer of the company:
 - (c) an order suspending the licence of the licensee for a period not exceeding 24 months and, in the case of a licensee that is a company, also suspending the licence of any officer of the company for a period not exceeding 24 months:
 - (d) an order that a licensee not perform any supervisory functions until authorised by the Board to do so:
 - (e) an order, in the case of a licensee who is an employee or independent contractor, or former employee or former independent contractor, that any current employment or engagement of that person by a licensee be terminated and that no agent employ or engage that person in connection with real estate agency work:
 - (f) an order that a licensee who is an individual pay a fine not exceeding \$15,000 and order a licensee that is a company pay a fine not exceeding \$30,000:
 - (g) where it appears to the Tribunal that any person has suffered loss by reason of the licensee's misconduct and the order is one that a court of competent jurisdiction could make in relation to a similar claim in accordance with principles of law, an order that the licensee pay to that person a sum by way of compensation as is specified in the order, being a sum not exceeding \$100,000.

...

[91] There are additional requirements in s 110 regarding compensation orders.

[92] In determining the appropriate penalty, it is relevant to note the purpose of the Act:

3 Purpose of Act

- (1) The purpose of this Act is to promote and protect the interests of consumers in respect of transactions that relate to real estate and to promote public confidence in the performance of real estate agency work.
- (2) The Act achieves its purpose by—
 - (a) regulating agents, branch managers, and salespersons:
 - (b) raising industry standards:
 - (c) providing accountability through a disciplinary process that is independent, transparent, and effective.

[93] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:¹⁰

...It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.

...

The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.

...

Lord Diplock pointed out in *Ziderman v General Dental Council* that the purpose of disciplinary proceedings is to protect the public who may come to a practitioner and to maintain the high standards and good reputation of an honourable profession.

[94] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the collective reputation and public confidence in the profession itself.¹¹

¹⁰ *Z v Dental Complaints Assessment Committee*, above n 6, at [97], [128] & [151].

¹¹ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; *Z v Dental Complaints Assessment Committee*, above n 6, at [151].

[95] While protection of the public and the profession is the focus, the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty.¹²

[96] The most appropriate penalty is that which:¹³

- (a) most appropriately protects the public and deters others;
- (b) facilitates the Tribunal's important role in setting professional standards;
- (c) punishes the practitioner;
- (d) allows for the rehabilitation of the practitioner;
- (e) promotes consistency with penalties in similar cases;
- (f) reflects the seriousness of the misconduct;
- (g) is the least restrictive penalty appropriate in the circumstances; and
- (h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

Mr Rankin

[97] There are no submissions from Mr Rankin, but he has provided some explanation of his circumstances. His claimed health issues receive some support from the limited medical evidence he has produced and from the affidavit of Mr Christensen. Additionally, he mentions in the account (28 August 2020) given to Mr Slater that he was being treated for a serious physical illness (the nature of which is disclosed) at the time of the George Street forgery.

[98] We accept that Mr Rankin, then and now, suffers from anxiety, stress and a disclosed mental health condition. There is evidence that in 2020 he suffered from a serious illness. This is a relevant factor in our assessment of the penalty. The medical evidence before the Tribunal does not though establish that Mr Rankin has at any relevant time suffered from any serious mental condition. Nor is there any evidence that he currently suffers from any serious physical illness.

¹² *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

¹³ *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], citing *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44]–[51] and *Katamat v Professional Conduct Committee* [2012] NZHC 1633, [2013] NZAR 320 at [49].

[99] Mr Rankin's forgery of signatures on agreements is serious and is denounced by the Tribunal. However, there was no theft or fraud. The vendors lost nothing. Nor does it appear that greed was a motivating factor.

[100] Indeed, it is difficult to discern what financial gain there was for Mr Rankin in forging the vendors' signatures. In every case, the vendors accepted his buyer's offer, so presumably would have signed agency agreements if belatedly presented to them at the time of the offer (though such agreements should have been signed before Mr Rankin undertook any marketing work for each property). Counsel for the Committee identifies "competitive advantage", at least in respect of the Tyndall Street property, where he was able to get an offer "over the line faster" due to signing the agency agreement himself.¹⁴ Mr Rankin certainly expressed a concern that the Tyndall Street sale might otherwise go to another agency.¹⁵ It seems to us that the forgeries were of only limited, if any real, advantage to Mr Rankin.

[101] Counsel for the Committee identifies the repeated nature of Mr Rankin's conduct, there being six instances of forgery, as a primary aggravating feature. We agree.

[102] Mr Rankin's previous disciplinary record is another aggravating factor.

[103] In a decision issued on 6 October 2017, the Tribunal found proven two charges of misconduct under s 73(b) of the Act (seriously incompetent or seriously negligent work).¹⁶ He had withheld from the purchasers a report stating that the property had tested positive for methamphetamine contamination. This amounted to breaches of rr 6.4 and 10.7 of the Rules. He had also allowed the purchasers to access the property, despite a warning in the report and without making any inquiries as to whether it was safe to do so. This conduct had occurred in 2015. Mr Rankin was censured, his licence was suspended for three months and he was fined \$3,000.¹⁷

[104] On the other hand, in mitigation, it is noted that Mr Rankin, while not fully engaging in the Tribunal's process, did admit the charge at an early stage in the process. He had even acknowledged his wrongdoing in the George Street transaction to the vendor and Mr Slater immediately on being confronted.

¹⁴ Submissions of the Committee (6 July 2022) at [21].

¹⁵ Summary of facts (17 May 2022) at [51.1].

¹⁶ *Complaints Assessment Committee 409 v Rankin* [2017] NZREADT 59.

¹⁷ *Complaints Assessment Committee 409 v Rankin* [2017] NZREADT 78.

Censure or reprimand

[105] Mr Rankin is censured. A reprimand would not reflect the gravity of his wrongdoing.

Cancellation and/or order not to employ

[106] The Committee initially sought cancellation of Mr Rankin's licence, but accepted in a memorandum (27 July 2022) filed after the hearing that cancellation could not be ordered if the licence was not extant.¹⁸ The Tribunal was invited to record, if it thought appropriate, that had cancellation been available, it would have made such an order.

[107] It is submitted that dishonesty is treated with the utmost seriousness in the real estate disciplinary context, with cancellation of the licensee's licence being the starting point. The Tribunal has already noted that probity and trustworthiness are critical to the work of professionals, such as real estate licensees. The High Court in *Morton-Jones* concerning a real estate professional cited with approval the following passage from an English decision concerning a solicitor:¹⁹

Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitor's Disciplinary Tribunal.

[108] It is not just the deceit involved in six forgeries that is concerning, but also the lack of substantive engagement with the Tribunal. We acknowledge that he has admitted the charge and is suffering from anxiety, but the psychological evidence does not justify his absence from the hearing or from engaging with the other parties in agreeing the facts. In the absence of a full explanation, supported by evidence, the Tribunal cannot be confident that Mr Rankin no longer remains a risk to the public and to the reputation of the profession.

[109] As Mr Rankin no longer has a licence, we cannot cancel it. We record though that, had he retained his licence, the seriousness of his wrongdoing would have led us to cancel it.

[110] As an alternative to cancellation, the Committee seeks an order under s 110(2)(e) of the Act that no agent employ or engage Mr Rankin in connection with real estate work. We note in this regard that we have the power to make penalty orders against former licensees.²⁰ For the same reason that we signalled the appropriateness of cancellation,

¹⁸ *Complaints Assessment Committee 521 v Wright* [2019] NZREADT 49 at [64].

¹⁹ *Morton-Jones v Real Estate Agents Authority*, above n 8 at [92]–[93].

²⁰ Real Estate Agents Act 2008, s 71(a).

we will make such an order. It is not opposed by Mr Rankin, who made no submissions in response to an invitation to comment on this prospective penalty.²¹

[111] We do not consider Mr Rankin's conduct to be so egregious that the prohibition against employment should be indefinite. As sought by the Committee, the period of the prohibition will be five years, which aligns with the period of cancellation.²² This specific period is not an indication that it would be appropriate for the Registrar of licensees to licence Mr Rankin at the expiry of the period of five years. Whether he is then a fit and proper person to hold a licence will be a matter for the Registrar to assess.²³

Fine

[112] The maximum fine against an individual is \$15,000.

[113] There are no submissions from any party as to the level of fine reasonable to impose against Mr Rankin. The Committee questioned whether this was an appropriate case to penalise Mr Rankin by fining him, in addition to prohibiting his employment (itself a severe financial penalty).

[114] There is some force in the Committee's question in the circumstances here. The Tribunal has in some cases refrained from imposing a financial penalty where a licence is cancelled or engagement prohibited, on the basis that all of the individual components of a penalty must be considered together so that the total penalty is fair, reasonable and proportionate.²⁴ In other cases it has imposed both penalties. While Mr Rankin has provided no evidence of his financial situation, we will take into account his early admission and his health. There will be no fine.

Tremain Real Estate

[115] The misconduct of Tremain Real Estate is not Mr Rankin's dishonesty, but the failure to report it to the Authority when it was first known. It is to be remembered that at that point in time, the agency was aware of only one instance of forgery, not the six that were eventually identified.

[116] Mr La Hood submits that the agency's misconduct is appropriately assessed as low to moderate. It is contended that censure would be appropriate and that the starting point for the fine should be in the region of \$6,000 to \$7,000. The penalty should signal

²¹ Tribunal's direction (26 July 2022).

²² Real Estate Agents Act 2008, s 37(1)(c).

²³ At s 36(1)(c), (2)(c).

²⁴ *TSM v Professional Conduct Committee* [2015] NZHC 3063 at [17].

to the industry that the reporting obligations of agencies are mandatory and cannot be avoided by addressing matters internally.

[117] Ms Gunter submits (19 July 2022) that the appropriate orders would be censure and a fine not exceeding \$2,000. The level of fine should be low. It is noted by counsel that Tremain Real Estate accepts unconditionally that it should have reported Mr Rankin immediately, for which it apologises.

Censure or reprimand

[118] We agree with both counsel that the censure of Tremain Real Estate is appropriate to mark our disapproval of the wilful contravention of a rule. The agency is hereby censured.

Fine

[119] Turning then to the fine, the maximum amount against a company is \$30,000.

[120] We accept the agency's submission that it was motivated by its concern for Mr Rankin's personal welfare. We regard this as a compelling mitigating factor. It is accepted by the Tribunal that, irrespective of lack of evidence before the Tribunal of any serious mental health issue, it would have appeared grave to the agency's managers. As counsel says, it was apparent to the managers that Mr Rankin was not in a good place emotionally. Mr Christensen's view of Mr Rankin's situation was supported at the time by the Authority's officer who expressed to him "great concerns" about Mr Rankin's wellbeing on 24 September 2020.

[121] The Tribunal notes the two earlier decisions particularly relied on by both counsel regarding the level of fine, *Grewal* and *Lindsay*.²⁵ In both cases there was multiple wrongdoing. The unreported wrongdoing in both cases was more serious. They bear some analogy with Tremain Real Estate's conduct, but the similarity is limited. No two cases ever have the same mix of wrongdoing and mitigation.

[122] Counsel for Tremain Real Estate also observes that publication of the Tribunal's decision will, in itself, constitute a significant penalty for both Mr Christensen and Tremain Real Estate. Publication and its attendant adverse publicity is not a penalty imposed by the Tribunal. It is an inevitable consequence of wrongdoing given the public's interest in

²⁵ *Complaints Assessment Committee 412 v Grewal* [2018] NZREADT 70 and *Complaints Assessment Committee 1907 v Lindsay* [2021] NZREADT 36.

knowing of misconduct through publication of our decisions. It is acknowledged as an adverse consequence, but it is not a significant factor in our assessment.

[123] While Tremain Real Estate did not report Mr Rankin's wrongdoing, it did not ignore it either. It put in place a process which would have been effective in protecting the public, had his employment with the agency continued. Mr Christensen acknowledges the lesson learned from the incident. There is little need to deter Tremain Real Estate from a repeat of this wrongdoing. Nor is this the right case to impose any deterrent level of fine, as a signal to the industry. This was an isolated occasion of wrongdoing which was well intentioned.

[124] The Tribunal is asked to consider Mr Christensen's unblemished reputation in the industry. His good reputation in the industry is noted, but the charge is against the agency, not Mr Christensen. The public record will show a complaint upheld against the company, not Mr Christensen. His concerns are understandable, but they are not an important factor in our considerations.

[125] We assess the gravity of the agency's wrongdoing as low. The fine will be \$2,000.

Costs

[126] The Committee seeks a contribution towards its costs. It is submitted that a starting point of 50 per cent of the Committee's reasonable costs would be orthodox, with the Tribunal able to make adjustments upwards or downwards depending on the circumstances.

[127] A memorandum (26 July 2022) from Mr La Hood states that the Committee's estimated external legal costs are \$8,000.

[128] The Tribunal's discretion to award costs is set out in s 110A of the Act, which lists certain factors to take into account. The High Court has identified the relevant considerations relating to the award of costs in professional disciplinary cases:²⁶

1. Professional groups should not be expected to bear all the costs of the disciplinary regime.
2. Members who appeared on charges should make a proper contribution towards costs.

²⁶ *TSM*, above n 24, at [21], citing *Vatsyayann v Professional Conduct Committee of New Zealand Medical Council* [2012] NZHC 1138 at [34]. Relied on by the Tribunal in *Wright* (above n 18 at [78]) and *Lindsay* (above n 25 at [77]–[78]).

3. Costs are not punitive.
4. The practitioner's means, if known, are to be considered.
5. A practitioner's defence should not be deterred by the risks of a costs order.
6. In a general way, 50 per cent of reasonable costs is a guide to an appropriate costs order subject to a discretion to adjust upwards or downwards.

[129] We accept that the Committee's costs of \$8,000 are reasonable. There is no reason not to award costs. Such an award was, appropriately, not resisted by Ms Gunter for Tremain Real Estate. There are no factors which justify an uplift or reduction from the guide of 50 per cent of reasonable costs. Accordingly, we award \$4,000, to be split between Mr Rankin and Tremain Real Estate.

[130] Mr La Hood advised that greater costs were incurred to prepare the case against Mr Rankin than the agency. Ms Gunter also urged us to make a higher award against Mr Rankin.

[131] We accept that greater costs would have been incurred in prosecuting Mr Rankin (six forgeries) than the agency (failure to report one forgery). On the other hand, Mr Rankin admitted the charge at the earliest stage of the Tribunal's process, whereas the agency initially denied the charges, though accepted liability before the Committee had to prepare its briefs of evidence. In the circumstances, we will evenly split the costs, with each defendant bearing half of the total of \$4,000.

ORDERS

Mr Rankin

[132] A charge of misconduct (disgraceful conduct) under s 73(a) of the Act is upheld.

[133] The Tribunal directs that no agent employ or engage Mr Rankin in connection with real estate agency work for a period of five years from the date of this decision, pursuant to s 110(2)(e). In addition, Mr Rankin is:

1. Censured.
2. Ordered to pay costs of \$2,000 to the Authority within 20 working days of this decision.

Tremain Real Estate

[134] A charge of misconduct (wilful or reckless contravention of r 7.2) under s 73(c)(iii) is upheld.

[135] Tremain Real Estate is:

1. Censured.
2. Ordered to pay a fine of \$2,000 to the Authority within 20 working days of this decision.
3. Ordered to pay costs of \$2,000 to the Authority within 20 working days of this decision.

[136] Pursuant to s 113 of the Act, the Tribunal draws the parties' attention to s 116, setting out the right of appeal to the High Court.

D J Plunkett
Chair

G Denley
Member

N O'Connor
Member